IN THE HIGH COURT OF JUDICATURE
AT BOMBAY
CIVIL APPELLATE JURISDICTION

FIRST APPEAL NO.196 OF 1998

The State of Maharashtra ...Appellant
Vs.
Arti Wd/o. Ashok Kapshikar & Ors. ...Respondents

CORAM: SMT.ROSHAN DALVI,J.
DATED: 21ST JUNE, 2007

JUDGMENT.

1. The State has challenged the Judgment dated 15th November, 1997 passed by the Commissioner for Workmen's Compensation Act and Judge, Ist Labour Court, Solapur ordering the compensation and penalty under the Workmen's Compensation Act, 1923 (the Act) for the accident caused to the husband of Respondent no.1 and the father of Respondents 2 and 3, on 3rd April, 1985 at the premises of the Appellants and during the course of the employment of the deceased. The deceased was admittedly a Sectional Engineer in the Quality Control Department of the Appellants at Bhandishegaon, Tal: Pandharpur, Dist: Solapur, Maharashtra. It has been the case of the

Respondents, who are the claimants, that the deceased was working in the Laboratory for testing cement, concrete and mortar blocks. There were 5 labourers, one Lab Assistant and one Chief Lab Assistant working in their laboratory. There was one Sopan Sadhu Darekar who was working under the deceased. He applied for leave to the deceased, which was refused. He therefore hit the deceased with an iron rod. The deceased was injured and he succumbed to his injuries. He was declared dead before admission to the hospital on the same day. The Respondents claimed compensation under the Workmen's Compensation Act before the learned Commissioner and Judge.

2. The Respondent No.1, widow of the deceased was given employment on compassionate grounds soon after the incident. She filed the claim on 31st March, 1987. The claim was not adequately stamped and objection was raised as to its stamping on 2nd April, 1987. The claim was correctly stamped on 29th July, 1987.

3. It is the contention on behalf of the Appellant that the claim has barred by law of limitation since it has not even filed within 2 years of the death as required under Section 10(1) of the Workmen's Compensation Act. It is also the claim of the Appellants that the deceased was working for

the Supervisory/Clerical capacity and hence, he was not a workman under Section 2(1)(n)(ii) of the Workmen's Compensation Act. It is further their case that since the Respondent No.1 was given appointment on compassionate grounds the claim cannot be maintained under Section 3(v)(b) of the Workmen's Compensation Act. They further contend that since the deceased was murdered the incident does not tantamount to accident and hence, compensation under the Workmen's Compensation Act is not payable. The Appellants' further challenge, the penalty imposed upon the Appellants for failure to deposit 50% of the claim amount as required under 4A of the Workmen's Compensation Act. They also contend that the act of murder and the motive for murder or the reasons leading to murder have no bearing upon the employment of the deceased and hence, the act is not in the course of employment consequent upon which the provisions of Workmen's Compensation Act are not attracted, since there is no injury by accident to the workman.

4. The Respondents have filed cross objections. The impugned Judgment grants interest at the rate of 6% p.a from 27th September, 1987, the date of the claim instead of at the statutory rate of 12% p.a of the Workmen's Compensation Act. The Respondents have further

challenged the grant of the amount of compensation under Section 4(1)(a) of the Workmen's Compensation Act.

5. The learned Judge has considered the aspects of the applicability of the act to the deceased as the workman, the nature of the accident as to whether it was during the course of employment of the deceased, the act of murder resulting in an accident by which death was caused to the deceased. The aspect of limitation, the rate of interest and the amount of compensation upon considering the evidence led by the parties and as per law.

6. Certain substantial questions of law arise in this Appeal. They can be stated as follows : -

(1) Whether the period of limitation computed from the date of the accident or the death continues up to the initial filing of the claim or till the time the objections are removed.

(2) Whether a person working as a Sectional Engineer in the construction, maintenance, repair or demolition of a building, Dam, road, bridge, tunnel, canal or a sea wall would be a “workman” under the Section 2(i)(n) r.w. Schedule II of the Workmen's

Compensation Act.

(3) Whether appointment of a widow of the deceased workman on compassionate ground tentamounts to an agreement entered int between the Workmen and an Employer under Section 3(v)(b) of Workmen's Act which would dis-entitle her from relief under the Workmen's Compensation Act.

(4) Whether a murder of an workman amounts to an accident.

(5) Whether murder due to a dispute relating to the work of the workman in the premises of his employer amounts to an accident during the course of employment.

(6) Whether denial of the claim on grounds specified in any of the Sections of the Workmen's Compensation Act and consequent non-deposit of the amount of compensation entails the grant of penalty for refund under Section 4A(i)(b) of the Workmen's Compensation Act.

(7) Whether interest at the rate of 6% p.a can be

granted upon the compensation determined under Act in the discretion of the Court.

(8) Whether the amount of compensation calculated under Section 4 of the Workmen's Compensation Act can be ordered as per the percentage applicable on the date of the Judgment though not applicable on the date of the claim.

Each of these aspects shall be considered separately as follows :-

7. ***Limitation*** :-

The death occurred on 3rd August, 1985 from the assault upon the deceased. The claim was lodged on 31st March, 1987. Under Section 10(1) it is required to be preferred within 2 years from the date of the death. Objections were raised under the claim. One such objection related to the inadequate of stamps on the claim. That objection came to be removed on 29th July, 1987. The 2 year statutory period expired on 2nd April, 1987. The claim was preferred 2 days before the statutory period expired.

8. Preferring the claim means filing the claim. It does not include removing of the objections. Some of the objections

would be merely technical. Non removal of objections per se cannot extend the period of preferring the claim.

9. It is contended by the Advocate for the Respondent that since there was no prayer for condonation of delay the claim got barred by limitation. That is an incorrect contention. The prayer for condonation of delay has to be made only if there is delay which can be condoned at the discretion of the Court. A bar created under any statutory provisions can never be condoned by the Court. Consequently it relates only to the initial filing of the claim. Upon such filing the claim must be taken to have been preferred. That having been done within the 2 year statutory period, the claim cannot be taken to be barred by the law of limitation.

10. The learned Commissioner and Judge has rightly decided this aspect.

11. ***Definition of Workman:*** -

The Workman is defined under Section 2(1) (n) (i) of the Act as a person employed in any capacity specified in Shedule II of the Workmen's Compensation Act. Schedule II shows a list of persons who, subject to the provisions of the Section 2(1)(n) are included in the definition of the workman.

The list of workmen under the schedule are persons employed in various kinds of establishments including railway, transport, mines, explosives, on the sea, railway mail service etc. The deceased falls under clause (viii) of the said list. He was admittedly employed in the construction of a canal.

12. It is contended on behalf of the State that because he was employed in a clerical capacity, he does not fall within the definition of Workman under the Act. A reading of the list shows that persons employed in Clerical capacity are exempted only under Clauses (i) and (ii) of Schedule II to the said Act. Such exemption is not found under clause (viii) of the said Schedule. A reading of the list shows that whenever the legislator intended to exempt persons in the said capacity, a specific provisions has been made. That has been done in the case of employment in a Railway and in any premises where a manufacturing process is carried out. It can be seen that in those establishments a separate administrative Office becomes necessary. Hence, persons working in a Clerical capacity in such an office are excluded from the definition of workmen.

13. As against that a reading of Clause (viii) shows persons employed in construction, maintenance, repair or demolition

of building, dams, canals etc. By its very nature the employment of such persons is at site. They are analogous to field work, they cannot be employed in a separate administration office and hence, would not fall under a separate clerical capacity. Consequently even supervisors or engineers at the construction site engaged in building any dam, canal etc. would not be excluded as per the unambiguous reading of Schedule II.

14. It is contended on behalf of the State that initially the Respondent claimed to fall under Clause (xxx) of Schedule II and not under Clause (viii) as reflected in para 6 of the impugned Judgment. It was contended on behalf of the Respondents that since he was an Engineer he does not fall within the clerical capacity. The learned Judge has made a reference to Clause (xxx) in the Judgment. The said clause relates to employment in a tube well. The Respondents predecessor was employed in a canal as a Sectional engineer at site.

15. My attention has been drawn by both the learned Advocates to the evidence of the witness No.1 for the State. That witness was a colleague of the deceased having the same designation and nature of work. He has deposed that in his department (which is of quality control) the work of

testing of cement, concrete and mortar blocks was carried out. It was his work to record the report about the testing, maintain the muster and submit the report, which was the same as the work of the deceased. This aspect has been specifically shown in the Judgment in the Criminal Prosecution in which the assailant was accused and convicted to murder by the Curt of Sessions, Solapur. **Whether accident was act of and in the course of employment:-** Paragraph 2 of the Judgment shows that he worked in the Quality Control in Ujani Central Project. It is therefore, clear that the deceased fell under Clause viii of Schedule II and under Clause xxx thereof. He was the Sectional Engineer and Head of the Laboratory Unit. His cross examination has shown that the deceased did not have authority to dismiss an employee, appoint him or take action against him. The State has relied upon this nature of work of the deceased. The State contends that the nature of work was supervisory and clerical and hence, the deceased was not a workman. Since the deceased fell under clause (viii) of Schedule II of the Workmen's Compensation Act. Once he was covered by Clause (viii), the distinction between clerical and Supervisory work and other construction work falls. Such distinction is required under certain other clauses and is specifically not required under Clause (viii). It therefore, does not matter what kind of work the deceased workman

carried out. Since he was admittedly employed in the construction of a canal by the State he fell within the definition of the term Workman under Clause (viii) of Schedule II to the said Act. He was therefore, a workman. The Judgment, to that extent cannot be assailed.

16. Appointment on compassionate ground :

It is contended on behalf of the State that since Respondent No.1 was employed as a Junior Clerk with the State on compassionate ground after the death of her husband, her application is barred under Section 3 (5)(b) of the Act. Section 3 provides for employer's liability for compensation. Sub-Section 5 is in the nature of an exception. Under that section no suit for damages is maintainable by a workman upon payment of compensation in respect of the injuries sustained by him under the Act or if the workman has entered into an agreement with his employer for providing compensation in respect of such injuries. It is contended on behalf of the State that the grant of compassionate employment tantamounts such an agreement under which consideration of an agreed amount is paid by way of wages or salary each month. Even if that be so, it would constitute a bar under the aforesaid section to a suit for damages. It does not constitute a bar to make a claim under the Workmen's Compensation Act, if it is

otherwise maintainable. The impugned judgment is correct to that end also.

17. ***Whether murder tentamounts to an accident*** :-

The term **"**accident**"** is not defined in the Workmen's Compensation Act. It is also not defined in the General Clause Act. The learned Judge has therefore, rightly considered the definition of an accident taking into account a dictionary meaning of the term. Black's Law Dictionary defines **"**accident**"** under Workmen's Compensation Acts as an unforeseen untoward incident which was not reasonably anticipated. The deceased workman could not and did not contemplate his murder. It was an unforeseen an untoward happening.

18. The incident ended in a criminal prosecution. The assaulter was convicted of murder. He has been sentenced to life imprisonment by the Court of Sessions at Solapur could neither be contemplated nor avoided by the victim. The workmen's Compensation Act is a social legislation. It was enacted to give succor to workmen against injuries caused by accident. The object of the Act does not specify the applicability of the Act only in case of accidents by machines. The injury in this case was caused by the act by another human being. It proved fatal. Hence, it tentamounts

to murder qua the assailant. The injury qua the workman is by an accidental act to which he succumbed. Consequently a murder committed upon a workman has to be taken as an accident.

19. The Judgment and order of the Court of Sessions, Solapur is the part of record. It has been produced in evidence before the Commissioner and Judge in the claim of Respondent No.1. It has therefore, to be read in evidence. Paragraph 14 of the Judgment shows that on 30th March, 1985 the assailant (accused) applied for optional holiday. 31st March, 1985 was the holiday. He wanted to enjoy it in continuation. His request was refused by his Superior. Nevertheless he remained absent on 30th March, 1985. The deceased made a report to the Sub Divisional Engineer in the Head Office. The application of the accused was produced at trial and so was the order passed by his Superior. We are not concerned with whether or not that amounted to sufficient motive to commit murder. The part of the judgment shows how the murder was committed. It resulted in the death of the workman at his work premises.

20. It arose out of a feud directly relating to the work of the Workman. He fell victim to the accident by murder only because he performed his duties in the normal course.

Hence, the fatal injury was caused to him by such accident arising out of and in the course of his employment. The observation of the learned Commissioner and Judge, to that extent cannot be faulted.

21. **Penalty** :

Under Section 4A(2) of the Act if an employer does not accept the liability for compensation to the extent it is claimed, he is enjoined to make a provisional payment based upon the extent of liability which he accepts. Such payment is required to be deposited with the Commissioner or made to the workman without prejudice to the right of the workman to make any further claim.

22. Under sub-clause 3(b) of the aforesaid section if there is no justification for the delay in depositing or paying such compensation, the Commissioner is empowered to direct the employer to pay a penalty of a further sum not exceeding 50% of such amount in addition to the payment of arrears and interest thereon. A reading of sub-clause 3(2) and the sub-clause (3)(b) of Section 4A show that the liability for incurring penalty follows upon acceptance of the liability to a particular extent and non-deposit or non-payment of such accepted liability to that extent.

23. In this case, the State has denied the entire liability. Consequently, sub-clause (2) does not apply. Sub-clause (2) would only apply if the employer accepts lesser liability than the liability claimed. In that case the admitted amount is required to be deposited with the Commissioner or paid to the workman. When the entire liability is denied, the claim has to be adjudicated. Consequently, there would be no question of deposit of any amount of claim with the Commissioner or payment to the workman. Consequently, therefore, the penalty which follows as a corollary to the acceptance of a part of the claim would not be leviable.

24. Since the State has denied the entire claim, they could not deposit any amount of claim as accepted by them with the Commissioner or pay any such amount to the workman or his heirs and legal representatives. The learned Commissioner has levied penalty to the highest extent of 50% on the amount of the arrears due to be paid by the employer (State) as adjudicated upon by him. The award of the penalty is, therefore, illegal. It could not have been made under Section 4A(3)(b) of the Act.

25. **Payment of interest**

Interest is payable at the statutory rate of 12% per annum on the amount of arrears due and payable and adjudicated

upon by the Commissioner under Section 4A (3)(a) of the Act. The learned Commissioner has granted a rate of interest of 6% per annum on the amount of compensation calculated and made payable. That is not the statutory rate of interest. Under the aforesaid sub-section, the statutory rate of interest is 12% or such higher rate not exceeding the maximum of the lending rates of any scheduled bank. The learned Commissioner, therefore, can either award a rate of interest of 12% or higher. He has no discretion to levy interest at any lower rate than 12%.

26. In this case, an interest levied upon the amount of compensation calculated is at the rate of 6% per annum from a given date. The rate of interest 6% is statutorily incorrect and, therefore, the award to that extent, is incorrect.

27. **Amount of compensation** :

Under Section 4 of the Act the amount of compensation upon the death, which results from the injury is 50% of the monthly wages of the deceased workman multiplied by the relevant factor. The multiplication by the relevant factor is not challenged. The arithmetical calculation is, therefore, not challenged. However, the extent of the percentage of the

monthly wages as contended by the Advocate for the Respondents is 50% of the wages. Section 4 of the Act to the extent of 50% of the monthly wages calculated was amended by Act 30 of 1995, which substituted 40% in Section 4(1) to 50% with effect from 15.9.1995. The claim was made on 30.3.1987 for the cause of action which accrued on 3.4.1985. The claim is to be granted as on the date of the application. On the date of the application the amended statute had not come into effect. 40% of the monthly wages multiplied by the relevant factor was, therefore, payable as on the date of the claim.

28. The amendment to any statute or any statutory provision which comes into force after the claim is filed, cannot determine the claim though the statute is made restrospective. In the case of M/s. J.K. Jute Mills Co. Ltd. Vs. State of U.P. Reported in 1961 SC 1534 the retrospectivity of a law enacted is upheld. It was, therefore, held applicable to the levy under the notification which was challenged. In this case, the retrospective effect is to be given to the amended provision from the date specified in the amending statute i.e. 15th September, 1995. Hence, for all pending cases also, which were pending since and after 15th September, 1995, the amended provision would apply. It can have no further retrospectivity in view of the pending

proceedings and appeals therefrom.

29. The Respondents claim the percentage of the amount of compensation as it existed on the date of the judgment. The claim was filed prior to the date on which the legislation came into effect. Hence such claim cannot be allowed. The Respondents' contention to that extent cannot be accepted.

30. Upon considering the aforesaid questions of law, the following order is passed:-

ORDER

1. The claim is not barred by the Law of Limitation.

2. The deceased was a workman under Clause (viii) of Schedule II under Section 2(1)(n)(i) of the Workmen's Compensation Act and hence, entitled to compensation thereunder.

3. The workman suffered an injury leading to his death due to an accident which was by commission of murder by the assailant during the course of employment of the workman.

4. The appointment of Respondent No.1, the widow of the workman as junior clerk on compassionate ground, does not debar her from suing for compensation under the Act.

5. The computation of compensation by the learned Commissioner is not disputed.

6. The penalty levied is illegal and improper.

7. The rate of interest granted upon the arrears of compensation payable to the Respondents is required to be at the rate of 12% per annum.

8. The amount of compensation required to be granted which resulted from the injury would be to the extent of 40% of the monthly wages of the deceased workman multiplied by the relevant factor. Order accordingly.

9. Appeal disposed of accordingly.

(SMT. ROSHAN DALVI, J.)